Reiss Viking *and* United Mine Workers of America, District 28 and Local Union 2460. Case 11–CA–15004

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On April 6, 1993, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the decision[1] and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions[4] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Reiss Viking, Tazewell, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.

[2] The Respondent argues that the judge erred in not permitting Compton, the Respondent's general manager, to testify about a conversation he had with Meadows, who was then Local Union 2460's president. The Respondent was given the opportunity to proffer Compton's testimony. We have considered the Respondent's proffer of testimony and find that even if adduced and credited it would not warrant a different result in this case.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent contends that some of the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the contentions are without merit.

[4] In concluding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to provide the Union with requested information, the judge, relying on *Island Creek Coal Co.*, 289 NLRB 851 fn. 1 (1988), and *Pertec Computer Corp.*, 284 NLRB 810 (1987), stated: ''Even when the information in the possession of an employer is deemed confidential, the employer violates the Act by refusing to furnish it where the employer has failed to demonstrate that the union would violate an agreement of confidentiality.'' The Respondent excepts, arguing that the cited cases do not stand for this proposition. We agree. In *Island Creek*, the Board held that absent proof that the union is unreliable in respecting confidentiality agreements, the employer's failure to test its willingness to treat information confidentially ''weighs heavily against [the employer's] defense.'' Thus, an employer's failure to show that the union is unreliable respecting confidentiality agreements does not per se establish that the refusal to furnish the information is violative, as the judge implies. Rather, such a failure is a factor, albeit an important one, in assessing the employer's confidentiality defense. We do not find, however, that the judge's interpretation of *Island Creek* and *Pertec* affects the result reached in this case.

Donald R. Gattalaro, Esq., for the General Counsel.
James A. Varner, Esq. and *Jenny A. Lenhart, Esq. (McNeer, Highland & McMunn)*, of Clarksburg, West Virginia, for the Respondent.
Susan D. Oglebay, Esq., of Castlewood, Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on November 5, 1992, at Tazewell, Virginia. The hearing was held pursuant to a complaint and notice of hearing (the complaint) issued by the Regional Director for Region 11 (the Regional Director) of the National Labor Relations Board (the Board) on July 2, 1992, against Reiss Viking (Respondent or Company). The complaint is based on a charge filed by United Mine Workers of America, District 28, Local Union 2460 (Charging Party, UMW, or the Union) on May 18, 1992.

The complaint alleges that Respondent, Reiss Viking, has violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) beginning about February 11, 1992, by refusing to bargain with the Union, the collective-argaining representative of Respondent's production and maintenance employees, including truckdrivers, employed by Respondent at its Tazewell, Virginia facility. The refusal to bargain, it is alleged, consists of Respondent's failure since about November 18, 1991, and particularly since February 11, 1992, to provide information requested by the Union. The requested information, the complaint alleges, is necessary for and relevant to the Union's performance of its function as the exclusive bargaining representative of the employees in the bargaining unit.

By its answer dated July 15, 1992, Respondent admits some allegations of the complaint, denies others, and denies violating the Act. At the hearing Respondent amended its answer to admit certain allegations about the Union's status.

On the entire record in this proceeding, including my observations of the witnesses who testified here, and after due consideration of the closing arguments by counsel at the hearing and the posthearing briefs filed by counsel for the Union and counsel for the Respondent (the General Counsel did not file a brief), I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits, and I find that at all times material Respondent is and has been a Wisconsin corporation operating a facility at Tazewell, Virginia, where it produces magnetite, that during the past 12 months Respondent received at its Tazewell plant goods and raw materials valued at $50,000 or more direct from points outside Virginia, and that Respondent is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On the first page of its posthearing brief, counsel for Respondent describes the Company as the ''Reiss Viking Division of C. Reiss Coal Company,'' and that is how the Company is identified in the collective-bargaining agreement. In the absence of discussion by the parties, I shall not amend the caption to modify Respondent's name. Record testimony describes the Tazewell plant as a full process grinding plant. Magnetite is described (Tr. 53) as an important commodity in coal production because it is used to change coal's specific gravity, allowing the coal to separate from the dirt and rock.

B. *The Labor Organization*

The complaint alleges, Respondent admits, and I find that at all material times the Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE APPROPRIATE UNIT AND BARGAINING HISTORY

As established by the pleadings, the appropriate bargaining unit is:

> All production and maintenance employees, including truckdrivers, employed by Respondent at its Tazewell, Virginia, facility, excluding office clerical employees, guards, and supervisors as defined in the Act.

Since about 1980, the pleadings (as amended at the hearing) also establish, the Union has been the designated collective-bargaining representative of Respondent's employees in the appropriate bargaining unit and has been recognized as such by Respondent. Such recognition has been embodied in a collective-bargaining agreement (CBA) which was effective by its terms for the period October 25, 1986, to October 26, 1987, and which is now extended on a year-to-year basis.

The pleadings, as amended, establish and I find that at all times since 1980 the Union has been the collective-bargaining representative of the employees in the appropriate bargaining unit, and by virtue of Section 9(a) of the Act the Union has been, and is now, the exclusive bargaining representative of the employees in the bargaining unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Testimony at the hearing was brief. The General Counsel called two witnesses, Donnie Lowe and Kennith Lester [Lester's given name is misspelled in the transcript as Kenneth], and rested. The Union presented no independent evidence, and Respondent called as its only witness Winfred Gary Compton, and rested. There was no rebuttal. Since May 1990 Donnie Lowe has been UMW District 28's president and, since about June 1990, Lester has been a field representative for District 28. Compton, who has been with Respondent for 13 years, has been Company's general manager of operations for about 3 years, and before that he was the plant superintendent at Tazewell. Compton's office is located at the Tazewell facility. Lowe and Lester testified persuasively, but Compton did not.

The CBA, currently extended on a year-to-year basis as earlier noted, provides, as part of article XV, seniority, section 11, which reads:

> 11. The company will not contract out work if there are any employees on layoff who can perform the work, and provided the necessary equipment is available. The laid-off employee shall demonstrate his skills to management in advance.

Lowe testified that over the past several years Respondent has eliminated shifts at Tazewell, and laid off employees, including some truckdrivers, and reduced its bargaining unit work force there, without cutting back on the number of the office and sales staff. The Union began to suspect that Respondent was contracting out some of the work that unit employees had been performing. During negotiations for a renewal contract, which have resulted in annual contract extensions since 1987, Respondent's representatives kept saying that McGlothlin, then a competitor, was underbidding Respondent and winning orders from customers which Respondent lost. Yet when Respondent subsequently bought the McGlothlin plant and thereafter closed it, unit work at Tazewell remained at reduced levels. Although Lowe personally did not attend the bargaining sessions with Respondent, Jack Meadows, then Local 2460's president, did, and Lowe discussed these matters with Meadows and Meadows' concern that Respondent was contracting out bargaining unit work.

Because of the Union's concern that the reduced levels of employees and unit work were the result of Respondent's contracting out unit work, the Union drafted an ''Information Request,'' dated June 26, 1991, which Compton concedes was presented to him by Meadows some time thereafter. The text of the documentary request reads:

> We ask that management provide the following information so that the Local can process the grievance in question.
>
> 1. List of all customers as of the effective date [October 25, 1986] of this Agreement.
>
> 2. List of all new customers after the effective date [October 25, 1986] of this Agreement.
>
> 3. List of any Company owned plants or facilities that is filling orders that the Tazewell operation has filled from the effective date of this Agreement to present time.
>
> 4. List of all truck loads and tons of magnetite that has been processed and/or delivered by other facilities or contractors that used to be processed and delivered by the Tazewell operation.
>
> 5. List of all contractors filling orders that the Tazewell operation has filled under this Contract.
>
> 6. List of all orders that goes thru Tazewell office.
>
> 7. Does Tazewell office transfer these orders to any other facilities, plants or contractors?
>
> 8. List of all orders transferred to any other facilities.
>
> 9. List of any new employees hired after the effective date of this agreement at any operations now filling orders that was filled by this operation . . . names, hire dates, and job titles.
>
> 10. List of all employees transferred to other facilities.

The Union's information request was followed by a grievance, signed by Meadows and dated August 6, 1991, the text of which reads:

> Management has abridged the rights of the employees as set forth in this Agreement by allowing employees not covered by this Agreement to perform our work, or by contracting it out.
>
> We ask that they cease and desist at once, and pay affected employees all time and benefits lost as a result of these violations.

During the following months, Lowe testified, he spoke by telephone with Compton at least twice, and probably more than that, asking whether Compton was going to respond to the Union's information request. Each time Compton said he was checking with Respondent's legal department and that he needed more time because the Union had asked for a lot of data, it would take time to assemble the data, and the legal department was checking to see whether the Company was required to provide the information. Compton denies that he had several conversations with Lowe about the matter.

Lowe testified that in December 1991 he, Lester, and Gary Johnson, the new president of Local 2460, met with Compton. At this meeting Lowe told Compton that the Union needed the information it had requested so the Union could determine whether it had a grievance, and that the Company needed to answer the grievance. Compton said that the Company was still assembling information in working on the matter and needed more time. Lester confirms this in his testimony. Compton recalls that at a meeting on another matter Lowe asked about the information request, but he denies telling Lowe that Respondent was trying to assemble the information because it was a broad request.

After the December 1991 meeting with Compton, Lowe assigned the matter to Lester for processing. By letter dated February 11, 1992, Lester wrote Compton as follows:

> A class action grievance was filed by L.U. 2460 concerning the Company contracting out work which belonged to the U.M.W.A. represented employees of the Reiss Viking Company.
>
> An information request was submitted to you concerning this grievance.
>
> During several conversations between you and the Local and District Representatives you have requested more time to gather this information, and each time the Union has granted your request.
>
> As of this date we have still not received any of the information that we requested. Therefore I am enclosing another copy of the information request, and if this information is not provided to me within ten days after you receive this letter then some form of legal action concerning this matter may be necessary.

Compton replied to Lester by letter of February 18, 1992, reading:

> In order to respond to the grievance filed by Local 2460 (dated 8/6/91) it would be most helpful to be made aware of the specific alleged contract violations that are complained of. Specifically:
>
> 1. Who were the non-union employees that performed BU work?
> 2. What work was performed?
> 3. When was the work performed?
> 4. What work was contracted?
> 5. When was BU work contracted?
>
> The information requested above is necessary for management to appropriately respond to the allegations and request for information.

Lester testified that shortly after he received Compton's reply he called Compton and said the Union could not provide the requested information because it was identical to that which the Union had requested. Compton said he would review the matter. Compton denies that the conversation occurred. The record contains no further correspondence. Lowe testified that Respondent has never furnished the requested data.

Lowe testified that he has not personally observed anyone at the Tazewell plant who, in his opinion, was doing ''trucking work'' (that is, as a subcontractor of unit work). However, Lowe did receive reports from unit employees of subcontractors performing unit work at the plant and with trucks. These reports apparently described incidents occurring after the August 6, 1991 grievance was filed. The reports described a frontend loader of Koch Raven (a contractor, apparently) working a stockpile using a Koch Raven employee, and McGlothlin's trucks coming to Respondent's Tazewell plant and hooking to Reiss Viking tankers loaded with magnetite. Lowe personally has seen McClothlin trucks with peel-off placards of Reiss Viking stuck on the tractor door (driving along the roadways, apparently). On one of these occasions, also after August 1991, Lowe observed a McGlothlin truck pulling a Reiss Viking tanker at Claypool Hill heading toward Respondent's Tazewell yard some 5 to 6 miles away, and the vehicle was being driven by someone other than a unit driver. Lowe concedes that he has no (hard) evidence of the contracting out, but states (Tr. 37), ''That's why I need the information.''

Denying that Respondent has contracted out any unit work, Operations General Manager Compton testified that magnetite production has declined over the years because demand for the product has dropped in the geographical region where Kentucky, Virginia, and West Virginia join, the area served by Respondent. Compton reports that in 1987 Respondent opened a plant in Kemper, Kentucky, to process magnetite, and that beginning in 1989 Respondent began laying off employees at Tazewell.

Compton testified that disclosure of the requested data would be unfair to Respondent because Company spent much time and money developing its customer base, and that if its list of 150 to 250 customers was divulged it would harm Respondent by giving its existing competitors a free ride while encouraging new competitors. Forced disclosure also would greatly harm Respondent's relations with its customers and, indeed, prompt civil damage suits against Respondent. Moreover, confidential data about magnetite, when joined with published figures about coal production, would enable competitors to calculate, as to Respondent's customers, the internal and confidential data on costs.

Testifying in reference to the list of requested data, Compton concedes that item 4 (magnetite process by others) does

not necessarily relate to customers, but such information has not been furnished because he understands the list to be a ''total'' request (that is, apparently to produce all or nothing). Item 5, list of contractors filling orders, does not relate to customers. Item 6, orders, refers to customers. Respecting item 7, orders transferred or contracted, Compton testified (Tr. 69) that in fact Respondent is not contracting out, and that if the customer names were blocked out on any reply then the reply would be meaningless. Item 9 (data on employees hired at other facilities now filling orders previously done at Tazewell) does not ask for a customer list, but Compton objects that the data on such employees is irrelevant. He gives the same position as to item 10 (list of employees transferred).

Although Compton asserts that he was concerned about confidentiality from the day he received the Union's request for information, he admits that his pretrial affidavit, given during Region 11's investigation of the Union's charge, does not mention confidentiality. Compton explains that it was prepared to respond to the Region's inquiry about relevance. Even so, Compton testified that in a February 1992 conversation he had with Donnie Lowe he told Lowe, who was inquiring about the requested data, that he had forwarded the request to Company's employee relations department. Asked if he told Lowe he thought the information was confidential, Compton testified, ''I don't recall saying that, no, sir.'' Compton concedes that he has no examples where the Union has divulged confidential matters in the past.

B. *Governing Law*

The Act requires an employer to furnish information requested by a union that is the bargaining representative of its employees if there is a probability that the information is relevant and necessary to the union in carrying out its statutory duties and responsibilities as the employees' bargaining representative. *Island Creek Coal Co*., 292 NLRB 480, 487 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990); *Bohemia*, 272 NLRB 1128, 1129 (1984). Although information which is not relevant to the union's purposes need not be furnished, the Board, with Supreme Court approval, uses a liberal discovery-type standard to determine whether information is relevant, or potentially relevant, to require its production. *AGA Gas*, 307 NLRB 1327 (1992); *Magnet Coal*, 307 NLRB 444 fn. 7 (1992); *Island Creek Coal Co*., supra; *Bohemia*, supra; *Pfizer*, 268 NLRB 916, 918–919 (1984), enfd. 763 F.2d 887 (7th Cir. 1985).

Information about terms and conditions of employees actually represented by a union is presumptively relevant and necessary and must be produced. *Bohemia*, supra. Information necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided as it falls within the ambit of the parties' duty to bargain. *Bohemia*, supra.

However, when a union's request for information concerns data about employees or operations other than those represented by the union, or data on financial, sales, and other information, there is no presumption that the information is necessary and relevant to the union's representation of employees. Rather, the union is under the burden to establish the relevance of such information. *Bohemia*, supra. The burden respecting persons or matters outside the unit requires a special demonstration of relevance based on a logical foundation and a factual basis for the information request. *Postal Service*, 310 NLRB 391 (1993).

Despite the ''special demonstration'' of relevance needed for data on persons or operations outside the bargaining unit, the standard to be applied in determining relevance remains the liberal ''discovery type standard.'' *Postal Service*, supra; *Hawkins Construction Co*., 285 NLRB 1313, 1315 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1988). And in assessing relevance, the Board does not pass on the merits of the union's claim that the employer breached the collective-bargaining contract or committed an unfair labor practice. Thus, the union need not demonstrate that the contract has been violated in order to obtain the described information. *Island Creek*, supra; *W-L Molding Co*., 272 NLRB 1239, 1240 (1984).

As the Board observed in *Doubarn Sheet Metal*, 243 NLRB 821, 824 (1979), quoted in part in *Island Creek*:

> It is not necessary, as Respondent appears to suggest, that the Union demonstrate actual instances of contractual violations before Respondent must supply information. Indeed, if the Union had sufficient information to prove contractual violations, it would not need to request information from Respondent.

The Union need not show that the information which triggered its request is accurate or even ultimately reliable. *W-L Molding*, supra. The Union may even make its request based on hearsay reports. *Magnet Coal*, 307 NLRB 444 fn. 3 (1992); *W-L Molding*, supra. From a definitional standpoint, ''hearsay'' reports may not technically be hearsay when offered not for the truth of the report but merely to show that the Union had some basis for making its request. *Walter N. Yoder & Sons*, 754 F.2d 531, 534 (4th Cir. 1985). But a union's ''bare assertion'' that it needs the information is insufficient. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); *Postal Service*, 308 NLRB 1305 fn. 29 (1992) (same respecting allegations of discrimination). The Union's request must be based on one or more objective factors—on something more than naked suspicion. *Bohemia*, supra, 272 NLRB at 1129.

A union need not accept an employer's response of, for example, no subcontracting, for the union is entitled to conduct its own investigation and reach its own conclusions. *Pertec Computer*, 284 NLRB 810, 811 fn. 5 (1987); *Barnard Engineering*, 282 NLRB 617, 621 (1987).

When a party asserts that requested information is confidential, that party has the burden of proof on the issue. *AGA Gas*, 307 NLRB 1327 (1992); *Barnard Engineering Co*., supra at 617 fn. 1; (1987); *Washington Gas Light Co*., 273 NLRB 116 (1984); *Pfizer*, 268 NLRB 916, 919 (1984), enfd. 763 F.2d 887 (7th Cir. 1985). Thus, names of customers are not necessarily exempt from discovery. *AGA Gas*, supra; *Magnet Coal*, supra, Appendix A at II.3; *Custom Excavating*, 228 NLRB 285 (1977), enfd. 575 F.2d 102 (7th Cir. 1978).

Even when the information in the possession of an employer is deemed confidential, the employer violates the Act by refusing to furnish it where the employer has failed to demonstrate that the union would violate an agreement of confidentiality. *Island Creek Coal Co*., supra at fn. 1, 859;

Pertec Computer, supra at 811. If an employer has an interest in maintaining confidentiality, the Board's remedial order directs that the Union refrain from any disclosure of the information to unnecessary persons. *Howard University*, 290 NLRB 1006, 1007 (1988).

C. *Analysis*

The General Counsel and the Union argue that an employer must furnish requested information so that a recognized union can administer the CBA. Agreeing with that general principle, Respondent argues that it had no duty to comply here because the Union's ''suspicion'' is unsupported by any objective facts and, in any event, is really about work transfers by Respondent rather than about subcontracting. Contending that the Union's June 1991 itemized list of requested data is devoted largely to work transfers to other facilities (of Respondent), Respondent observes that nothing in either the CBA or the law prevents Reiss Viking from transferring or relocating unit work from Tazewell to another of Respondent's plants. Moreover, there is no objective evidence either of work transfers or of subcontracting. Finally, Respondent asserts that the requested data, besides being irrelevant to any provision of the CBA, is confidential.

The evidence, I find, establishes a reasonable basis for the Union's concern that Respondent had begun contracting out unit work. Unit employees were being laid off, yet the office and sales staffs remained intact. Respondent's expressed concern, during contract negotiations, about competitor McGlothlin underbidding Company as apparently being the cause failed to ring true when conditions failed to improve after Respondent purchased McGlothlin and closed that plant. Moreover, the Union had reports from unit employees of subcontracting. Although these reports, and the personal observations of District 28 President Lowe, of possible subcontracting violations occurred after the Union's August 6, 1991 grievance, they tend to corroborate the Union's concern about subcontracting in violation of article 15 section 11 of the CBA.

The CBA has no work-preservation article, nor any section prohibiting work transfers. If the Union's grievance advances to arbitration, it may be that the Union will lose on the basis there is no contractual provision preventing work transfers and on the subcontracting portion because in fact there has been no subcontracting. However, we do not litigate here the merits of the Union's grievance. Data furnished under the request may demonstrate that the Union's concerns about subcontracting are indeed well founded. Consequently, the Union is entitled to receive, under a liberal discovery-type standard, the data it needs to make an informed evaluation of its grievance about the subcontracting and the Union's chances of prevailing before an arbitrator. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1987); *Island Creek Coal Co.*, supra.

Respondent's contention about confidentiality is, I find, more afterthought than real concern. The names of Respondent's customers are not confidential, for the Company's drivers deliver to them. In theory the Union could compile a customer list from the drivers, assuming that all the drivers cooperated. The Union is not restricted to self-help, however, and is entitled to know that the information it obtains is authentic and complete because it comes direct from the Respondent. Moreover, the Company has not shown the Union to be untrustworthy in confidential matters. General Manager Compton admits that he has no examples of any such failure. I therefore find Respondent's confidentiality contention to be without merit.

Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing on and after February 18, 1992, to furnish to the Union the requested data. Although some of the Union's requested items bear directly on work transfers rather than on subcontracting, it is necessary that Respondent furnish all the requested data in order that the Union can calculate how much, if any, work has been subcontracted. That is, while any work transfers are not, by themselves, relevant to the Union's administration of the CBA, the Union needs that data in order to determine what the total is for all the work that existed.

To describe the matter differently, one may envision the total production compared to the total of all deliveries. From the total production pile, one portion (perhaps all) was and is handled by unit employees; another portion (or perhaps none) was transferred to another facility of Respondent; and yet a third portion (or perhaps none) was subcontracted. To determine whether any part of the whole was subcontracted, the Union has to begin with the whole and trace where it went. If the data shows that some of the whole left as work transfers, that is not something which the CBA directly prohibits, but it is information the Union needs to determine just how much of the whole, if any, left by way of subcontracting—and subcontracting is restricted by the CBA. Moreover, the Union is not restricted to Respondent's word on any of this, or even to Respondent's records, but may verify both by checking with customers.

CONCLUSIONS OF LAW

1. The Respondent, Reiss Viking, is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Mine Workers of America, District 28 and Local Union 2460 is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since 1980 the Union has been the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the employees in the following appropriate bargaining unit:

> All production and maintenance employees, including truckdrivers, employed by Respondent at its Tazewell, Virginia, facility, excluding office clerical employees, guards, and supervisors as defined in the Act.

4. The information requested by the Union in its letter of February 11, 1992, resubmitting its itemization of June 26, 1991, is necessary for and relevant to the Union's performance of its function as the exclusive bargaining representative of the employees in the recognized unit.

5. By failing and refusing, on and after February 18, 1992, to furnish the Union with the information it requested by its letter of February 11, 1992, resubmitting the itemization of June 26, 1991, Respondent Reiss Viking has violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Reiss Viking, Tazewell, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Mine Workers of America, District 28 and Local Union 2460 as the exclusive bargaining representative of the employees in the following appropriate unit by refusing to furnish the Union with the information requested by its letter of February 11, 1992, resubmitting its itemization of June 26, 1991. The unit is:

> All production and maintenance employees, including truckdrivers, employed by Respondent at its Tazewell, Virginia, facility, excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request furnish the Union, in writing, the data requested by the Union's letter of February 11, 1992, resubmitting its itemization of June 26, 1991; provided, that on receipt of this data the Union, its officers, agents, members, and attorneys shall not divulge the information to any other persons not involved in or not necessary to the resolution of the grievance in question.

(b) Post at its plant in Tazewell, Virginia, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with United Mine Workers of America, District 28 and Local Union 2460 by refusing to furnish the Union with the data it requested by letter of February 11, 1992, resubmitting its itemized information request of June 26, 1991.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union, in writing, the information requested by its letter of February 11, 1992, resubmitting its itemized information request of June 26, 1991, which the Union needs in protecting the rights of employees covered by the Union's collective-bargaining agreement with us; provided, however, that on receipt of this data the Union, its officers, agents, members, and attorneys shall not divulge the information to any other persons not involved in or necessary to the resolution of the grievance in question.

REISS VIKING